

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF SOCIAL SERVICES AND HOUSING

SUBTITLE 7

STATE INTAKE SERVICE CENTERS

CHAPTER 1200

GENERAL PROVISIONS

REPEALED

§§17-1200-1 to 17-1200-27 REPEALED. [R **APR 15 2000**]

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GENERAL PROVISIONS

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SUBCHAPTER 1

DEFINITIONS

§17-1200-1 Definitions. As used in this chapter:

"Access" means authorization to review personal and public records.

"Agency" means the state intake service centers or any of its subdivisions.

"Agency hearing" means the administrative proceedings provided to the petitioner to contest the denial of review of petitions, or to redress an agency disposition or to provide declaratory relief.

"Challenge" means an oral or written contention by an individual as to the accuracy and completeness of a personal record.

"Contested case" shall be as defined in section 91-1, Hawaii Revised Statutes.

"Declaratory relief" means the agency's declaration that a rule or order of the agency, or a statute which the agency is mandated to administer or enforce, applies to a factual situation in favor of the petitioner.

"Executive director" means the executive director of the state intake service centers.

"Hearing officer" means a person, not interested in the outcome of the matter, who is authorized to conduct hearings or render decisions, or both on any case or controversy within the agency's jurisdiction.

"Individual" means a natural person.

"Party" means:

- (1) The agency, if it participates in a proceeding;
- (2) Each person named in the proceeding; and

- (3) Any interested person or aggrieved person permitted or entitled to participate in a proceeding before the agency in a capacity other than a witness.

"Person" includes individuals, partnerships, corporations, associations, or organizations of any character, except for the agency.

"Personal record" shall be as defined in section 92E-1, Hawaii Revised Statutes.

"Petition" means a properly documented submission of information by an individual seeking relief.

"Program" means a combination of resources and activities designed to achieve an objective or objectives.

"Public record" shall be as defined in section 92-50, Hawaii Revised Statutes.

"Rule" shall be as defined in section 91-1(4), Hawaii Revised Statutes.

"Rule relief" means the adoption, modification, or repeal of any rule by the agency in favor of the petitioner. [Eff. **AUG 10 1985**] (Auth: HRS §§26-35, 91-1, 91-2, 91-8, 92E-10,, 353-1.4) (Imp: HRS §§26-35, 91-1, 91-2, 92-50, 92E-1, 353-1.4)

SUBCHAPTER 2

RULES OF GENERAL APPLICABILITY

§17-1200-2 Purpose. This chapter implements the programs, policies, and practices of the agency. [Eff. **AUG 10 1985**] (Auth: HRS §§26-35, 91-2, 353-1.4) (Imp: HRS §§26-35, 91-2, 353-1.4)

§17-1200-3 Applicability. (a) Chapters 17-1200 to 17-1201 govern the administrative and programmatic practices of the agency.

(b) Chapters 17-1202 to 17-1204 govern the integration and coordination of the criminal history record information system and the presentence credit system of the paroling authority, the corrections division of the department of social services and housing, and the state intake service centers. [Eff. **AUG 10 1985**] (Auth: HRS §§26-35, 353-1.4) (Imp: HRS §§26-35, 353-1.4)

§17-1200-4 General responsibilities of the executive director. The executive director shall:

- (1) Develop and adopt rules, policies, and standards to promote the proper application of the operations of the agency;
- (2) Administer all intake service centers;
- (3) Maintain a liaison and coordinating role with criminal justice agencies in order to integrate state intake service centers' operations; serve as a liaison with federal, state, county, and private agencies as related to the administration of criminal justice;
- (4) Maintain a liaison and coordinating role with the Hawaii criminal justice data center to integrate the agency's criminal history record information system with the data center system; and
- (5) Perform other responsibilities as necessary to carry out statutory duties.

[Eff AUG 10 1985] (Auth: HRS §§26-35, 353-1.4) (Imp: HRS §§26-35, 353-1.4)

§17-1200-5 Authority of the executive director. The executive director may delegate authority or functions to any subordinate officer or employee of the agency. The executive director shall retain the final authority to make exceptions to and approve or to overrule any decision or action taken by his delegate. [Eff AUG 10 1985] (Auth: HRS §§26-35, 353-1.4) (Imp: HRS §§26-35, 353-1.4)

SUBCHAPTER 3

PROVISION FOR RULE RELIEF

§17-1200-6 Purpose. This chapter shall govern all proceedings brought before the agency for the adoption, modification, or repeal of any agency rule. [Eff AUG 10 1985] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§17-1200-7 Format and certification of petition. (a) A person may submit a signed petition

either in person or by mail to the agency. The petition shall be legibly written or typed, identifiable by name, address, zip code, or telephone number.

- (b) The petition shall set forth the text of the:
 - (1) Rule to be repealed; proposed rule sought to be adopted; or existing rule sought to be amended together with the proposed amendment; and
 - (2) The facts or circumstances giving rise to the petition to include:
 - (A) The petitioner's interest and reasons for the petition;
 - (B) The necessity for rule relief;
 - (C) The anticipated effects or impact of the rule relief;
 - (D) Questions or issues raised by the rule relief; and
 - (E) The petitioner's position or contentions with respect to questions or issues raised.
 - (c) The petitioner may be required to submit a statement of memorandum of additional facts clarifying a specific factual issue which will aid the agency in its consideration of what action to take on a request or petition.
 - (d) The agency may refuse to consider the petition where:
 - (1) The petition is not supported by a memorandum of authorities;
 - (2) The petition is deemed frivolous;
 - (3) The matter is not within the agency's jurisdiction;
 - (4) The petition is based on hypothetical or speculative facts; or
 - (5) A controversy of material fact exists which needs to be resolved before any relief may be considered or granted.
 - (e) Unless otherwise provided, all petitions shall be filed with the agency.
- [Eff AUG 10 1985] (Auth: HRS §§91-2, 91-6)
 (Imp: HRS §91-6)

§17-1200-8 Rule relief. (a) Upon the filing of the petition, the agency within thirty days shall notify the petitioner of a determination whether or not to proceed with the relief.

(b) If the agency decides to proceed, it shall set the matter for further proceedings pursuant to section 91-3, Hawaii Revised Statutes.

(c) If the agency decides not to proceed, it shall notify the petitioner in writing denying the request and the reasons therefore. The denial shall be final. [Eff AUG 10 1985] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

SUBCHAPTER 4

PROVISION FOR DECLARATORY RELIEF

§17-1200-9 Purpose. This chapter shall govern all proceedings brought before the agency which are intended to obtain a declaratory relief of the applicability of any rule or order by the agency, or any statute the agency is mandated to administer or enforce with respect to a factual situation. [Eff AUG 10 1985] (Auth: HRS §§91-2, 91-8) (Imp: HRS §§91-2, 91-8)

§17-1200-10 Format and certification of petition. (a) A person may submit a signed petition either in person or by mail to the agency. The petition shall be legibly written or typed, identifiable by name, address, zip code, or telephone number.

(b) The petition shall set forth the text of the:

- (1) Nature of the petitioner's interest and reason for submittal;
- (2) Identification of the specific provision, order, rule or regulation in question; and
- (3) Statement of the position or contention of the petitioner or a memorandum of authorities, including legal authorities, in support of such position or contention.

(c) The petitioner may be required to submit a statement of memorandum of additional facts clarifying a specific factual issue which will aid the agency in its consideration for declaratory relief.

(d) The agency may refuse to consider the petition where:

- (1) The petition is not supported by a memorandum of authorities;
- (2) The petition is deemed frivolous;

- (3) The matter is not within the agency's jurisdiction;
 - (4) The petition is based on hypothetical or speculative facts; or
 - (5) A controversy of material fact exists which needs to be resolved before any relief may be considered or granted.
 - (e) Unless otherwise provided, all petitions shall be filed with the agency.
- [Eff AUG 10 1985] (Auth: HRS §§91-2, 91-8)
 (Imp: HRS §91-8)

§17-1200-11 Declaratory relief. (a) Upon the filing of a petition for declaratory relief, the agency within thirty days shall notify the petitioner in writing whether or not to proceed with the relief.

(b) If it is determined by the agency that a genuine controversy of material fact exists within the petition, the agency shall:

- (1) Issue a declaratory order within sixty days from the date of receipt of the petition; or
- (2) Dismiss the petition for declaratory relief and allow its refiling as a petition for rule relief.

(c) Declaratory order or rule relief shall apply only to the factual situation alleged in the petition set forth.

(d) If the agency decides not to proceed, it shall notify the petitioner in writing that the petition is denied, and giving reasons for the denial. The petitioner may seek administrative relief pursuant to this chapter or judicial remedies.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 91-8)
 (Imp: HRS §91-8)

SUBCHAPTER 5

PROVISION FOR ADMINISTRATIVE RELIEF

§17-1200-12 Purpose. This chapter shall govern all proceedings brought before an agency hearing which is intended to obtain:

- (1) A final resolution for declaratory relief; and

- (2) Resolutions for any contested matter within the agency's jurisdiction.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 353-1.4)

§17-1200-13 Certification for hearing proceedings. (a) A person may petition for a hearing before the agency either in person or by mail. The petition shall include:

- (1) The petitioner's name, address, zip code, or telephone number, date and signature of the petitioner; and

- (2) A statement of the relief requested and the reasons therefore.

(b) The petition shall be filed with the agency and assigned a document number.

(c) Upon the filing of the petition, the agency within twenty working days shall determine whether or not to proceed with a hearing.

(d) If the agency decides not to proceed, it shall provide the petitioner with a written notice of the determination not to proceed and the reasons therefore. The petitioner may request the agency to reconsider the determination, or may pursue judicial remedies.

(e) If the agency decides to proceed, it shall set the matter for further proceedings before an agency hearing pursuant to this chapter.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 353-1.4)

§17-1200-14 Notice of hearing. (a) Upon determination to proceed with a hearing, the agency shall notify all parties of the hearing date at least fifteen days prior to the hearing.

(b) A new hearing date may be afforded to the parties by the hearing officer; provided that the parties act within seventy-two hours prior to the hearing to extend the hearing date. The hearing officer may:

- (1) Approve a stipulation between parties extending the hearing date;
- (2) Upon motion by a party, for good cause shown before expiration of hearing date extend the hearing date; or

- (3) Upon motion by a party, for good cause shown permit action after the expiration of the seventy-two hour period.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 91-9, 91-9.5)

§17-1200-15 Proceedings for motions. (a) An application for an order shall be made by motion, which, except during a hearing, shall be in writing and state the grounds for the application and the order sought.

(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law, by a memorandum in support.

(c) Except for a motion entitled to be heard ex parte, all motions shall be accompanied by a notice of hearing. Unless otherwise directed by the the hearing officer, the motion and notice shall be served upon all parties not less than seventy-two hours before the hearing, and the opposing parties shall serve any counter affidavits and memorandum in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the agency except that after a petition has been transferred to the hearing officer, all motions shall be filed with, and decided by the hearing officer.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 353-1.4)

§17-1200-16 Powers of the hearing officer in conducting hearings. (a) The hearing officer, in conducting a hearing, may:

- (1) Issue notices of hearings and appearance of parties;
- (2) Examine witnesses;
- (3) Rule upon offers of proof, receive relevant evidence, and exclude irrelevant evidence or restrict questioning or testimony;
- (4) Regulate the manner of any examination to prevent unnecessary harrassment, intimidation, or embarrassment of any witness or party;
- (5) Remove disruptive individuals;
- (6) Hold conferences;

- (7) Rule on motions and dispose of procedural requests on similar matters;
- (8) Certify a question to the agency for the agency's consideration;
- (9) Submit in writing a report or recommended decision together with the findings of facts and conclusions of law and a recommended order to the agency for consideration;
- (10) Render a final decision; and
- (11) Dispose of any matter that normally arises in the course of the proceedings and to take action authorized by chapter 91, Hawaii Revised Statutes or any other related laws administered by the agency.

(b) Nothing in this section may prevent the hearing officer to suspend, postpone or terminate the hearing by default. [Eff AUG 10 1985]
(Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 353-1.4)

§17-1200-17 Disqualification of hearing officer. (a) No matter shall be heard by the hearing officer who:

- (1) Has any pecuniary interest in the matter;
- (2) Is related within the third degree by blood or marriage to any party in the proceeding; or
- (3) Has participated in any pre-proceeding investigation of the matter or in developing evidence to be introduced at the proceeding or in making the decision or taking the action challenged in the proceeding.

(b) The hearing officer affected by the categories in subsection (a) shall be disqualified from hearing the matter, either on own motion or of any party. Any motion to disqualify the hearing officer shall be decided prior to the hearing.
[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4)
(Imp: HRS §§91-2, 353-1.4)

§17-1200-18 Ex parte communications. (a) In any proceedings before the agency, no party or representative of a party shall communicate with the hearing officer concerning the merits of the case.

(b) It shall be improper for any person interested in a proceeding to seek to influence the

judgment of any member of the agency or hearing officer designated.

(c) It shall be improper for a member of the agency to:

- (1) Disclose or reveal to any other member of the agency or hearing officer designated, the contents of any investigatory, agency prepared report concerning the matter the agency member or hearing officer is designated to hear and decide; or
 - (2) Furnish the report or a copy thereof to any agency member or hearing officer designated, except where authorized by law.
- [Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 91-13, 353-1.4)

§17-1200-19 Rights of parties. (a) The parties shall have an opportunity to:

- (1) Present oral or documentary evidence;
- (2) Examine the case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (3) Present the case independently or with the aid of others including legal counsel;
- (4) Bring witnesses, including language interpreters;
- (5) Establish all pertinent facts and circumstances;
- (6) Advance any arguments appropriate to the issue being heard without undue interference; and
- (7) Question or refute any testimony or evidence, and to confront and cross examine witnesses.

(b) The parties by stipulation may modify or waive any proceeding procedures prior to and during the hearing.

(c) The parties by stipulation, agreed settlement, consent order, or default may informally dispose of the case in question prior to and during the hearing proceedings. [Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4) (Imp: HRS §§91-2, 91-9, 353-1.4)

§17-1200-20 Recording of proceedings. (a) The official records of proceedings shall include materials prescribed in section 91-9(e), Hawaii Revised Statutes.

(b) Records of proceedings requested for the purposes of rehearing or court review, may be transcribed.

(c) The records transcribed shall not include matters outside the record of proceedings.

[Eff AUG 10 1985] (Auth: HRS §§91-2, 353-1.4)
(Imp: HRS §§91-2, 91-9, 353-1.4)

§17-1200-21 Decisions. (a) A final decision shall not be rendered by the agency prior to the hearing and examination of all evidence unless the decision is made in the form of a proposal which is subject to the following conditions:

- (1) That the proposed decision contains a statement of reasons for the decision, including the determination of issues of fact or law necessary;
- (2) That the proposal is served to the party seeking relief; and
- (3) That an opportunity is afforded to the party to file oral or written exceptions and to controvert the proposal.

(b) A final decision shall be rendered in writing by the agency to the affected party within one hundred twenty calendar days from the date of request for a hearing. The exception is when the hearing is continued or the record is held open wherein the time limit shall be extended only for the period of the continuance. The decision shall contain:

- (1) The findings of fact and conclusions;
- (2) Any filed proposed findings of fact and ruling on the proposed finding; and
- (3) A statement concerning the petitioner's right to judicial review.

[Eff AUG 10 1985] (Auth: HRS
§§91-2, 353-1.4) (Imp: HRS §§91-2, 91-11,
91-12)

SUBCHAPTER 6

ACCESS TO PUBLIC AND PERSONAL RECORDS

§17-1200-22 Purpose. This chapter provides the guidelines for access to public and personal records. [Eff: AUG 10 1985] (Auth: HRS §§92E-10, 353-1.4) (Imp: HRS §§92-51, 92E-10, 353-1.4)

"§17-1200-23 Access to public record. (a) The public may obtain public information as to matters within the jurisdiction of the agency by submitting a request in writing to the agency, or by inquiring in person at the agency.

(b) Requests for copies of records shall be in accordance with section 92-21, Hawaii Revised Statutes." [Eff: AUG 10 1985] (Auth: HRS §91-2) (Imp: HRS §§92-21, 92-51)

§17-1200-24 Access to personal records. (a) A person, in writing, may request access to the person's own personal record unless exempt by section 92E-3, Hawaii Revised Statutes, laws, or this chapter. The request shall contain:

- (1) Identifying information, including name, address, or telephone number, and date of request; and
- (2) The general nature of the request.

(b) Upon prompt certification to proceed with the request by the agency, it shall provide access to the person within ten working days following the date of the request. An additional twenty working days beyond the ten day period may be extended to the agency; provided that the agency within the initial ten working days, notifies the person of the circumstances for the delay.

(c) Access to records shall be permitted; provided that:

- (1) Appropriate personal identification is made available prior to the review;
- (2) Access to review is conducted during normal business hours of the agency;
- (3) Examination of records is conducted under a supervised environment to assure the security of the record; and

- (4) Copies for records requested shall be in accordance with sections 92E-6 and 92E-7, Hawaii Revised Statutes.

(d) If the agency refuses the person access to records, the agency within ten working days following the request shall submit in writing the reasons for its refusal and the procedures for administrative relief provided in section 17-1200-26.

[Eff AUG 10 1985] (Auth: HRS §§92E-10, 353-1.4) (Imp: HRS §§92E-2, 92E-6, 92E-7)

§17-1200-25 Challenge to correct or amend personal record. (a) A person may challenge any factual error in the record and to correct or amend the error. The challenge shall be in the form of a request which:

- (1) Specifies the requested correction or amendment; and
 - (2) Provides supportive evidence or information of the record.
- (b) Upon date of receipt of the request, the agency, in writing, within twenty working days shall:
- (1) Acknowledge the receipt of the request;
 - (2) State the corrections or amendments to the record; or
 - (3) State its refusal to correct or amend the record, the reasons for the refusal, and the procedures for administrative relief provided in section 17-1200-26.

[Eff AUG 10 1985] (Auth: HRS §§92E-10, 353-1.4) (Imp: HRS §92E-8)

§17-1200-26 Administrative relief procedures.

(a) Upon refusal of the agency to allow a person access to a record or to correct or amend a personal record, or both, the person may petition the agency in writing for an administrative review of its refusal. The petition shall contain among other things:

- (1) The reasons for the person's disagreement as to the agency's refusal; and
- (2) Any new supportive evidence or information of the record.

(b) Upon receipt, the petition shall be assigned to a hearing officer for review.

[Eff AUG 10 1985] (Auth: HRS §§92E-10, 353-1.4) (Imp: HRS §92E-8)

§17-1200-27 Administrative review. (a) Upon refusal of the agency to allow a person access to a record or to correct or amend a personal record or both, the hearing officer within thirty working days after receipt of the petition for review of the agency's refusal shall:

- (1) Make a final determination to permit or deny the person access to a record, or to correct and amend the record, or both; or
- (2) Allow the person upon denial to include in writing into the person's personal record wherever appropriate, the reasons for the person's disagreement as to the agency's denial.

(b) Persons denied may seek judicial remedies.

[Eff AUG 10 1985 1 (Auth: HRS §§92E-10,
353-1.4) (Imp: HRS §§92E-9, 92E-13)